

STORAGE NAME: h0955.ca

DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 955

RELATING TO: Contracting

SPONSOR(S): Representative Lacasa

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS (CAC) YEAS 9 NAYS 1
 - (2) COMMUNITY AFFAIRS (PRC)
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
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I. SUMMARY:

The bill, as introduced, makes several proposed changes to state construction and electrical contractor regulation, by:

- 1) Establishing "supervision of field work" as an element of the job scope (the list of activities requiring licensure) of all construction contractors;
- 2) Defining "field work" as being performance of those activities which occur on the job site, and which also require construction contractor licensure;
- 3) Providing that the Construction Industry Licensing Board (CILB), or the Electrical Contractors Licensing Board (ECLB), may issue a statewide journeyman certificate to any person who meets the existing statutory qualifications necessary to receive reciprocity between local jurisdictions;
- 4) Establishing that the CILB or ECLB may charge a biennial journeyman certification fee of up to \$100, and an application fee of up to \$50;
- 5) Establishing that a local jurisdiction may discipline a journeyman certificate holder for misconduct or negligence, related to the journeyman's trade; and
- 6) Providing that a person fraudulently representing himself or herself as a journeyman commits a felony of the third degree.

However, a "strike everything" amendment, adopted by the Committee on Business and Professional Regulation, and traveling with the bill, applies the proposed changes only to electrical and alarm system contracting. The amendment requires the contractor or his qualified designee (a journeyman) to be on the job site whenever work requiring licensure is going on. It also provides for the issuance of a statewide journeyman license to anyone who is qualified to receive reciprocity according to current statutes.

The fiscal impact on state or local governments is indeterminate based on the bill, as introduced, and the "strike everything" amendment.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

GENERAL INFORMATION ON CONTRACTOR REGULATION

Chapter 489, F.S., establishes two parallel systems of contractor licensing in Florida. Construction contracting is regulated under part I of chapter 489, F.S. Electrical and alarm system contracting is regulated under part II of the same chapter.

A contractor may obtain a:

- (1) State certification issued by the Construction Industry Licensing Board (CILB) or the Electrical Contractor's Licensing Board (ECLB) within the Department of Business and Professional Regulation, which authorizes practice in all jurisdictions across Florida; **or**
- (2) Local license, which is in turn registered with either the CILB or the ECLB. A local license with state registration allows the licensee to practice only within the jurisdiction which has issued the person the local license.

A state certified contractor has a duty to supervise the field work done under the contractor's certification. [See, §§ 489.1195 & 489.522(1), F.S.] However, this supervision requirement does not require that the contractor be at the work site while the work is being done. Local jurisdictions are unable to discipline state certified contractors, except for withholding the permitting privileges of contractors guilty of fraud or a willful building code violation.

Local jurisdictions have the authority to determine the qualifications for practice of those who seek local licensure. They also have the authority to discipline locally licensed contractors. If a local jurisdiction has imposed a penalty against the local license, it forwards any recommendation for a suspension or revocation of the registration to the CILB or ECLB. A suspension or revocation of the registration has the effect of invalidating all of the various local licenses the registered contractor holds. Without the action by the CILB or the ECLB against the registration, the locally licensed contractor is free to continue work in any other jurisdiction in which the person holds a local license.

JOURNEYMEN

Many local jurisdictions, including Dade County, license journeymen. Historically, the primary path to achieving journeyman status is to enter a union and comply with its requirements for licensure as a journeyman. These requirements include a minimum number of years of experience as an apprentice, and the passage of an examination. More recently, non-union paths have been made available by local jurisdictions. The primary trade which includes journeyman licensure is electrical. Plumbing and air conditioning often also incorporate a journeyman license option. The state does not license journeymen.

An enduring controversy relating to journeymen and the issue of on-site supervision began in Dade County on April 4, 1995. On that date, the Dade County Commission placed its existing construction contractor and electrical contractor regulatory ordinance (chapter 10) into its building code. By making this change, Dade County sought to impose local control over state certified contractors, with specific intent to require that all contractors have a licensed journeyman on every job-site.

Since the state does not license journeymen, a locally-issued journeyman license is not portable between jurisdictions. A person who might be a highly-qualified and licensed journeyman in one jurisdiction may not have his or her license accepted in another jurisdiction. Industry sources allege that this non-reciprocity is almost always the case. At the time the controversy arose, Dade County did not accept journeyman licenses from any county other than Broward.

Over a period of time, two approaches were proposed by contractor organizations to address the portability issue: either statewide journeyman licensure, or forced reciprocity. Statewide journeyman licensure envisions the CILB or ECLB issuing a single license which must be accepted in all jurisdictions, essentially a license analogous to the existing statewide certification for contractors. Forced reciprocity amounts to establishing standards which, if the existing journeyman licensees meet them, force local jurisdictions to accept the journeyman license issued by another jurisdiction.

However in 1997, two years after the original action by Dade County precipitating the controversy, both of these issues -- local government's ability to impose journeyman requirements on the workforce of a certified contractor via the building code, and the portability of existing journeyman licenses -- were resolved. In 1997, HB 1441 provided that local jurisdictions could not gain workforce control over certified contractors by virtue of placing such ordinances in their building codes. Also in 1997, HB 1197 established forced reciprocity, requiring local jurisdictions to accept the journeyman license issued by other local jurisdictions, provided that such license was issued pursuant to stipulated criteria and standards.

Since 1997, advocates of the need to have qualified supervision on the job site when construction work is being performed have continued to try various means to accomplish their goals. One court case, Construction Industry Licensing Board, et al, v. Florida Home Builders Assn., Inc., et al. (1st District Court (DCA) of Appeal, #'s 98-895, 98-920), was recently under appeal. The central question in that appeal is whether certified contractors have a duty to comply with local ordinances, such as those which require on-site supervision. According to a Jacksonville attorney for Florida State Building and Construction Trades Council which intervened in that case, the First DCA eventually agreed with the circuit court and ruled that chapter 489, F.S., as it currently reads, does not permit local jurisdictions to in any way provide that a state certified contractor must use licensed journeymen to supervise construction work. The court further stated that it is up to the state Legislature to make the change.

B. EFFECT OF PROPOSED CHANGES:

The bill, as introduced, has the effect of explicitly requiring the contractor to perform all on-site supervision work for any activity requiring licensure. It also establishes statewide certification for journeymen, including an application fee and biennial certification fee. It provides that local jurisdictions can discipline a journeyman certificate holder for misconduct or negligence related to the journeyman's trade. And, finally, it provides that a person fraudulently representing himself or herself as a journeyman commits a felony of the third degree.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill requires that a licensed contractor or a journeyman be physically on the job site providing supervision. The bill therefore increases the number of offenses for which the CILB or ECLB may discipline a state certified contractor.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. See above.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No. Journeymen seeking a statewide license will have that option, but are not *required* to pay any additional fees in order to perform activities they are presently able to do.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

Indeterminate. The option of a statewide journeyman license may allow a journeyman to practice across the state at less cost than having to seek numerous separate licenses or reciprocity accommodations among numerous local jurisdictions.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Any person seeking statewide licensure as a journeyman will be required to pay an application fee and biennial certification fee.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill allows persons wishing to practice statewide as a journeyman the option of seeking a single license, and not having to apply and negotiate reciprocity agreements with local jurisdictions.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, the bill does create new government interference with a presently lawful activity. Presently, it is lawful for the contractor to provide supervision without being on-site. This bill will make such a supervision procedure unlawful.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 489.105, 489.1455, and 489.5335, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 489.105, F.S., to provide an additional job scope responsibility for contractors.

Sections 2-3. Amends ss. 489.1455, and 489. 5335, F.S., to establish a statewide certification for journeymen; to provide that certified journeymen can be disciplined for misconduct or negligence related to their practice as journeymen; and to provide that fraudulently representing yourself as a licensed journeyman is a third degree felony.

Section 4. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The DBPR will have greater responsibilities, and greater expenses, from being required to open disciplinary cases against contractors who attempt to exercise their on-site supervision responsibilities from off-site.

The DBPR will incur an indeterminate amount of expense, and receive an indeterminate amount of revenue, from its new responsibility for issuing journeyman certificates.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

If a significant number of locally licensed journeymen choose to obtain the statewide certificate, local jurisdictions will lose revenue because those journeymen will no longer be required to obtain and renew the locally issued journeyman license.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Contractors may find being required to provide on-site supervision more difficult and inconvenient at best, and more expensive at worst. Contractors with multiple jobs occurring at the same time may find compliance impossible.

2. Direct Private Sector Benefits:

The statewide journeyman certification provision should provide a journeyman with a more useful license, at a lower cost, than the alternative of pursuing multiple local journeyman licenses or multiple reciprocity accommodations.

3. Effects on Competition, Private Enterprise and Employment Markets:

See above.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with cities and counties.

V. COMMENTS:

The interested parties on both sides of this issue recognize that having and maintaining a qualified supervisor on each job site may be difficult for the contractor. However, the proponents of this bill firmly believe that such a requirement will produce better work and safer structures.

On the other hand, the opponents believe that the current law already imposes an absolute duty to supervise the work of an electrical or alarm contractor or other contractor. They point to s. 489.1195, F.S., and s. 489.522, F.S., 1998 Supplement, to support this claim. Basically, these provisions place the "responsibility for supervision of all operations of the business organization, for all field work at all sites, and for financial matters, both for the organization in general and for each specific job" on the qualifying agent which is being interpreted as also being the contractor.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Business Regulation and Consumer Affairs adopted a "strike everything" amendment at its March 22, 1999, meeting, making the proposed changes apply only to part II of the chapter (electrical and alarm system contractors). The amendment, traveling with the bill:

- Provides that electrical and alarm system contractors must provide "proper onsite supervision";
- Defines proper onsite supervision as having the contractor or his qualified designee on the job site whenever work requiring licensure is going on. A qualified designee can be another contractor or a journeyman. Provisions are made for allowing the contractor or his designee to be absent from the site for short intervals.
- Authorizes local jurisdictions to inspect for compliance with proper supervision requirements, and then file a complaint with the Florida Construction Industry Licensing Board, if necessary;
- Provides that the contractor may be disciplined for failure to comply with onsite supervision requirements;
- Provides for the issuance of a statewide journeyman license to anyone who is qualified to receive reciprocity according to current statutes.; and

- Imposes a third degree felony on any person who fraudulently represents that he or she meets the criteria for or holds a valid journeyman certificate or registration.

A House Member will offer an amendment to the "strike everything" amendment at the April 20, 1999, House Community Affairs Committee meeting. Primarily, the amendment applies the current proposed changes in the "strike everything" amendment to plumbing contractors and journeymen plumbers. Thus, this amendment:

- Provides that plumbing contractors must provide "proper onsite supervision";
- Defines proper onsite supervision as having the plumbing contractor or his qualified designee on the job site whenever work requiring licensure is in progress. A qualified designee can be a licensed plumbing contractor or holder of a master or journeyman plumbing certificate. Provisions are made for allowing the contractor or his designee to be absent from the site for short intervals.
- Authorizes local jurisdictions to inspect for compliance with proper supervision requirements, and then file a complaint with the Florida Construction Industry Licensing Board, if necessary;
- Provides that a county or municipality may discipline a journeyman plumber certificate holder for misconduct or negligence related to the practice of the journeyman's trade;
- Deletes obsolete language relating to a waiver of additional examination or license fee under certain circumstances for certain plumbing journeymen;
- Provides for the issuance of a statewide journeyman plumber certificate to anyone who is qualified to receive reciprocity according to current statutes; and
- Imposes a third degree felony on any person who fraudulently represents that he or she meets the criteria for or holds a valid journeyman certificate or registration.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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